

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL RAY FRANCE,) Case No. C 15-4078 PSG (PR)
Plaintiff,)
v.)
SHERIFF THOMAS D. ALLMAN, et al.,)
Defendants.)

**ORDER OF SERVICE AND
DIRECTING DEFENDANTS TO
FILE DISPOSITIVE MOTION
OR NOTICE THAT SUCH
MOTION IS UNWARRANTED**

Michael Ray France, proceeding *pro se*, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. For the reasons stated below, the court serves the amended complaint and directs defendants to file a dispositive motion or notice that such motion is unwarranted.

I. DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.¹ In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a

¹ See 28 U.S.C. § 1915A(a).

1 defendant who is immune from such relief.² *Pro se* pleadings must, however, be liberally
 2 construed.³

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
 4 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
 5 the alleged deprivation was committed by a person acting under the color of state law.⁴

6 B. France's Claims

7 France alleges that on April 2, 2014, he was brought into Mendocino County Jail, where
 8 he is currently housed. France was thrown into a dirty safety cell, and then moved to
 9 administrative segregation, where he has remained with no justification. France also alleges that
 10 while he was in administrative segregation, he has been denied religious meals. France names as
 11 defendants Sheriff Thomas D. Allman, Captain Pearce, Sergeant Studor, and Lieutenant Bednar.
 12 Liberally construed, France has stated cognizable claims of cruel and unusual punishment and a
 13 violation of the free exercise of his religion.

14 **II. CONCLUSION**

15 1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
 16 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the amended
 17 complaint and all attachments thereto, a Magistrate Judge consent form, and a copy of this order
 18 to **Sheriff Thomas D. Allman, Captain Pearce, Sergeant Studor, and Lieutenant Bednar at**
 19 **the Mendocino County Jail.** The Clerk also shall mail a courtesy copy of the complaint and a
 20 copy of this order to the Clerk of the Board of Supervisors, 501 Low Gap Road, Room 1010
 21 Ukiah, CA 95482.

22 2. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure
 23 requires them to cooperate in saving unnecessary costs of service of the summons and complaint.

25 ² See 28 U.S.C. § 1915A(b)(1), (2).

26 ³ See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

27 ⁴ See *West v. Atkins*, 487 U.S. 42, 48 (1988).

1 Pursuant to Rule 4, if defendants, after being notified of this action and asked by the court, on
2 behalf of France, to waive service of the summons, fail to do so, they will be required to bear the
3 cost of such service unless good cause be shown for their failure to sign and return the waiver
4 form. If service is waived, this action will proceed as if defendants had been served on the date
5 that the waiver is filed, except that pursuant to Fed. R. Civ. P. 12(a)(1)(B), defendants will not be
6 required to serve and file an answer before sixty (60) days from the date on which the request for
7 waiver was sent. Defendants are asked to read the statement set forth at the bottom of the waiver
8 form that more completely describes the duties of the parties with regard to waiver of service of
9 the summons. If service is waived after the date provided in the Notice but before defendants
10 have been personally served, the answer shall be due sixty (60) days from the date on which the
11 request for waiver was sent or twenty (20) days from the date the waiver form is filed, whichever
12 is later.

13 3. No later than sixty (60) days from the date the waiver is sent, defendants shall file
14 one comprehensive motion for summary judgment or other dispositive motion with respect to the
15 cognizable claims in the amended complaint. At that time, defendants shall also submit the
16 Magistrate Judge's consent form.

17 Any motion for summary judgment shall be supported by adequate factual documentation
18 and shall conform in all respects to Fed. R. Civ. P. 56. Defendants are advised that summary
19 judgment cannot be granted, nor qualified immunity found, if material facts are in dispute. If
20 defendants are of the opinion that this case cannot be resolved by summary judgment, they shall
21 so inform the court prior to the date the summary judgment motion is due.

22 4. France's opposition to the dispositive motion shall be filed with the court and
23 served on defendants no later than twenty-eight (28) days from the date defendants' motion is
24 filed. France is advised to read Rule 56 and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)
25 (holding party opposing summary judgment must come forward with evidence showing triable
26 issues of material fact on every essential element of his claim).

27 5. Defendants shall file a reply brief no later than fourteen (14) days after France's
28 opposition is filed. The motion shall be deemed submitted as of the date the reply brief is due.

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ORDER OF DISMISSAL WITH LEAVE TO AMEND

1 No hearing will be held on the motion unless the court so orders at a later date.

2 6. All communications by France with the court must be served on defendants or
3 defendants' counsel, by mailing a true copy of the document to defendants or defendants'
4 counsel.

5 7. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
6 No further court order is required before the parties may conduct discovery.

7 8. It is France's responsibility to prosecute this case. France must keep the court
8 and all parties informed of any change of address and must comply with the court's orders in a
9 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
10 pursuant to Fed. R. Civ. P. 41(b).

11 IT IS SO ORDERED.

12 DATED: 3/30/2016


PAUL S. GREWAL
United States Magistrate Judge